
(1906) 03 CAL CK 0005
In the Calcutta High Court
Case No : Govt. App. No. 1 of 1906

Dy. Legal Remembrancer

APPELLANT

Vs

Ijyatulla Kazi

RESPONDENT

Date of Decision : 20-03-1906

Acts Referred:

Citation : (1906) 03 CAL CK 0005

Final Decision : Dismissed

Judgement

1. The accused, Ijyatulla Kazi, was tried before a Deputy Magistrate at Barisal on a charge under sec. 420, Indian Penal Code, of having committed cheating and was convicted and sentenced to six months" rigorous imprisonment and a fine of Rs. 1,000, in default to rigorous imprisonment for a further period of six months. On appeal to the Sessions Judge the conviction and sentence were set aside and Ijyatulla Kazi was acquitted.

2. Against that acquittal an appeal has been preferred on behalf of Government against the decision of the Sessions Judge.

3. The ground on which the Sessions Judge acquitted Ijyatulla Kazi was that the money which the complainant lent in this case to Ijyatulla had been given on the assurance of another person named Abdur Rouf who introduced Ijyatulla to the complainant, and therefore if the offence of cheating was committed at all, it was committed by Abdur Rouf and not by Ijyatulla Kazi because the complainant had been induced to make over the money to Ijyatulla by the assurance given to him by Abdur Rouf.

4. We have had the evidence that has been recorded in this case read to us and we may say at once that the view which the Sessions Judge has taken is incorrect. There can be no doubt whatever that although Abdur Rouf introduced Ijyatulla Kazi to the complainant, Rash Mohun Shaha, the latter on behalf of his firm, advanced the sum of Rs. 5,200 to Ijyatulla not merely on the assurance of Abdur Rouf, but on the representations made by Ijyatulla that he was a member

of the firm of Ijyatulla and Mokummel of Dhopakali, and that they had three boats in which he would ship 1600 maunds of rice to the firm of the complainant at Beliaghata. If the offence of cheating was committed, it was, in our opinion, committed by Ijyatulla and not by Abdur Rouf, and therefore the reason given by the Sessions Judge for setting aside the conviction and sentence is in our opinion unsound.

5. We have had however to consider in this case whether in fact the offence of cheating has been proved by the evidence adduced against Ijyatulla.

6. The case for the prosecution was that Ijyatulla was introduced to the firm of which Rash Mohun Shaha, the complainant, is the representative at Jhalakathi, the firm being the firm of Parbati Charan and Kristo Das Roy; and that he was introduced as a person who was desirous of purchasing rice on advances being made to him and that he would deliver it at the place of business of the firm at Beliaghata where it would be sold. The arrangement made between the firm and the persons to whom these advances were made appears to have been that the money was advanced on the understanding that the rice would be purchased from the outlying hats and would be shipped and delivered at the firm place of business, at Beliaghata, and there would be sold. The profit on the sale of the rice would go to the persons who took the advances but they would have to pay to the firm the capital advanced, with interest thereon, and a commission of one anna per maund of rice sold. It was not therefore a transaction in which the money was advanced for the purchase of rice for the firm itself. The money was advanced in order that the transaction in rice might pass through the firm out of which the firm might derive its profits.

7. The evidence of the two members of the firm at Jhalakathi is to the effect that on the 7th December 1904, the sum of Rs 400 was made over to the accused on his agreeing to purchase rice and deliver it at Beliaghata and that he returned on the 15th December 1904 and asked for further advance saying that he had commenced to purchase the rice, and that he was then paid Rs. 4,800 more. The agreement between the parties was that Ijyatulla would purchase 1600 maunds of rice and would send it in three boats to Beliaghata so as to arrive by the 21st Pous (corresponding with the 5th January). It is stated that the accused Ijyatulla represented to the members of the firm that he and Mokummel his partner had three boats in which he would be able to send down the rice. The 21st of Pous passed and the members of the firm at Jhalakathi received intimation that no boats carrying rice had arrived from the accused. A member of the firm then went to the village of Dhopakali where the accused lived and asked him why the rice had not been despatched. He told them that the money which he had borrowed, had been lost by the sinking of a boat. There is however no evidence to support this statement, and if it was made, it does not appear subsequently to have been the explanation of the accused nor was it the explanation given during the trial. The member of the firm who went to Dhopakali saw one boat, near the ghat, of the accused but he does not appear to have examined it nor does he

seem to have made any further enquiries to ascertain whether the accused had then any rice in his possession or not; but he seems to have satisfied himself by enquiring into the village that there was no such firm in existence as Ijjatulla and Mokummel and also that they had not three boats. As the rice had not been delivered information was lodged to the Police in the beginning of February and the present prosecution was commenced against the accused.

8. In support of the appeal it has been contended that the accused obtained the money from this firm by means of the false representations, namely, that he was a member of the firm Ijjatulla and Mokummel at Dhopakali, that that firm had three boats, and that he intended to purchase rice and deliver it at Beliaghata.

9. It is further contended that his subsequent conduct shows that he never intended to purchase any rice at all and that he misappropriated the money which by his false representations he induced the firm to make over to him.

10. We have read the evidence for the prosecution and we are unable to agree with the learned Counsel for the Crown that the representations as to the existence of the firm and the boats were absolutely false. It seems that Ijjatulla and his relation Mokummel lived together in the same house and that they carried on business together; Mokummel seems to be the actual proprietor of a boat and the accused used to go in this boat with consignments of rice and shared with Mokummel in the profits. The facts that these two men are not a regularly constituted partnership and have no books of the firm are not in our opinion sufficient to prove that the representation that they were members of a so called firm was absolutely incorrect.

11. With regard to the representation as to boats the witnesses for the prosecution do not agree whether the three boats were boats which actually belonged to the accused, or whether there was one boat belonging to the accused and two others which they intended to hire, or two belonging to the accused and one which they intended to hire. Under the circumstances we can conclude that the representation was to the effect that the accused and his partner would be able to secure the three boats in which the rice would be sent to Beliaghata. We are unable to say that that the representation was entirely false.

12. The important question however is whether when the accused took over the money from the firm of the complainant he had any intention of purchasing rice and sending it to Beliaghata at all.

13. The learned Counsel for the Crown has contended that he had no such intention.

14. On behalf of the defence 4 witnesses were examined to prove that about the time when the accused received the money from the complainant's firm, he made advances to them for the purpose of purchasing rice from the outlying markets. One of these Asiruddin Manjee says that he purchased 100 maunds of

rice at Rs. 375 and supplied it to the accused. That was however in the end of Pous and after the terms within which the rice had to be delivered at Beliaghata had expired. Another man named Ajaharuddin Shaikh says that he received Rs. 500 for the purchase of rice from the accused and he purchased 175 maunds, but that he did not deliver it over to the accused in consequence of the dispute which arose between the accused and the complainant's firm. Another man named Miajan Mollah says that he received Rs. 400 for the supply of 125 maunds of rice and that he offered the same to the accused but the accused refused to take it as the complainant's firm had instituted a case against him; and the fourth witness, Ketabdi, says that he received Rs. 300 from the accused for rice which he had stored in his house, but that as the quarrel between the accused and the complainant's firm had afterwards arisen he did not deliver the rice.

15. There is also the evidence of Madhu Karighar and Ismail witnesses for the prosecution to the effect that during the month of Pous the accused Ijjatulla was engaged in purchasing rice, and there is the fact that after the charge was preferred against him to the Police, the Police proceeded to the village of the accused and seized a boat in which there were about 135 maunds of rice.

16. The case for the accused is that in this boat at least 300 maunds of rice valued at about Rs. 1,300 had been loaded, but that after the Police had taken possession of the boat some of the rice was stolen out of it. There is then this evidence to support the case for the accused that after he received the money, he made attempts to purchase rice in order to fulfil the terms of the agreement which he had made with the firm of the complainant.

17. The learned Counsel for the Crown has contended that all this evidence is worthless and has suggested that the rice was introduced into the boat, which the Police seized after the information had been lodged to them, simply as a blind in order to make up a defence that the accused was attempting to carry out the terms of the agreement. It is true that in this case it is remarkable that the persons who say that they received these advances from the accused for the purchase of rice also say that no written receipt was given. But if the story which they tell be true that the money was merely advanced to them for immediate purchase and delivery of rice from outlying hats this circumstance is not in itself so extraordinary as to throw doubt on the whole of their evidence. From the evidence of some at least of the witnesses for the prosecution it appears that the accused made some attempts to purchase rice within the time within which he was to deliver it, under the terms of his agreement, and after the best consideration that we have been able to give to the evidence we are not satisfied that this is in fact a case of cheating, and is not, on the other hand, a case where for reasons of which we are not aware the accused after having made the agreement was not able to carry out its terms.

18. Evidence has been adduced on behalf of the prosecution to prove that after the money was made over to the accused, he redeemed some jewellery and paid some debts. The mere fact that he redeemed Rs. 100 worth of jewellery and paid

off some small debts would not be in itself sufficient to prove that the intention of the accused when he received the money from the complainant's firm, was dishonest or that he obtained this money by fraudulent misrepresentation of facts, in our opinion the case is really one of breach of contract, and though there may be circumstances in the case which go to indicate that the accused has not behaved as well as he might have done and has not made as great efforts as he might have made in order to secure the purchase and delivery of the rice within the time fixed in the agreement, we are unable from these facts to arrive at the conclusion that his intention at the time when he received the money was to defraud the complainant. Though, therefore, we think that the grounds on which the Sessions Judge has set aside the conviction and sentence are unsound we still are of opinion that the conviction and sentence passed on the accused cannot be maintained because the prosecution have failed to prove that the offence of cheating was committed by him. We therefore dismiss the appeal.